

Consolidated appeals from separate decisions of the Alaska State Office, Bureau of Land Management, declining to order participation in coal exploration licenses AA-42150, AA-42151, and AA-42152, and approving interim conveyance of certain lands to Chugach Natives, Inc. AA-5039-5, AA-8096-4, and AA-12432.

Affirmed.

1. Alaska: Coal Leases and Permits -- Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance -- Coal Leases and Permits: Applications

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

APPEARANCES: Ray D. Gardner, Esq., Anchorage, Alaska, for appellant; Bart K. Garber, Esq., and Frederick H. Boness, Esq., Anchorage, Alaska, for Chugach Natives, Inc.; Dennis Hopewell, Esq., Office of the Regional Solicitor, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HARRIS

In James W. Taylor & Associates, Inc., 69 IBLA 1 (1982), this Board reviewed the history of James W. Taylor & Associates, Inc.'s (Taylor) request to participate in three coal exploration licenses sought by and granted to Chugach Natives, Inc. (Chugach), AA-42150, AA-42151, and AA-42152. In that case we held that BLM failed to comply with its regulatory obligation to make a threshold determination of whether to allow participation by Taylor. Since BLM had not proceeded according to the regulations we set aside its decision and remanded the case for appropriate action. We stated, however, that "the record indicates that all of the lands encompassed by the three

coal licenses in question have been selected by Chugach and that BLM is preparing to convey those lands to Chugach. Conveyance of the lands may negate the necessity for any further action in this case." Id. at 8.

By letter-decision dated February 17, 1983, the Alaska State Director, BLM, informed Taylor that he was declining to order participation in the three coal exploration licenses. His rationale was apparently two-fold. He stated that the three licenses were due to expire in May and June 1983, and he explained that the 1982 Chugach Natives, Inc., agreement had been signed, which made segregation of the land in question and subsequent conveyance imminent. 1/ Taylor filed an appeal docketed with the Board as IBLA 83-480.

On June 7, 1983, BLM issued decisions approving interim conveyances to Chugach including conveyance of the lands in question. Taylor also appealed that action (IBLA 83-799). These appeals have been consolidated, *sua sponte*, for purposes of decision.

Taylor has made a number of arguments on appeal seeking to persuade the Board that the action of the State Director in declining to allow participation was improper. Taylor argues that the information submitted by it was never given serious consideration by BLM. Taylor also attacks the bases for the State Director's decision. It argues that action in its favor is not foreclosed because there has been no conveyance of the lands. Further, Taylor asserts that as long as the lands have not been withdrawn, BLM is not entitled unilaterally to disregard Public Land Order No. 5953, 46 FR 30817 (June 11, 1981), requiring the collection of data from exploration and evaluation of whether to offer lands for leasing. In addition, Taylor would

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1/ The State Director stated in his letter:

"Coal exploration licenses AA-42150 and AA-42151 were effective May 29, 1981, and will expire May 28, 1983. Coal exploration license AA-42152 was effective June 15, 1981, and will expire June 15, 1983. 'An exploration license shall not be valid for more than two years from its effective date' 43 CFR 3410.3-1(b). This two-year limitation was statutorily set by section 4 of the Federal Coal Leasing Amendments Act of 1976 [30 U.S.C. 201(b)]. Also, 43 CFR 3410.3-1(h) states 'Exploration licenses shall not be extended.'

"Since issuance of the Interior Board of Land Appeals (IBLA) decision cited below, the 1982 Chugach Natives Inc. (CNI) Agreement has been signed and the notice of proposed withdrawal, which is to segregate the lands for conveyance, through exchange, to CNI, has been drafted and should be signed and published at any time. \* \* \* Further, the proposed withdrawal will segregate the lands, subject to valid existing rights, from leasing under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287)."

Although the State Director indicated that Taylor could still apply for its own exploration licenses, he stated that an applicant for exploration licenses on selected land would have to "solicit the views of the [Native] corporation." Given the documented relationship between Taylor and Chugach, this could hardly be taken as a serious alternative for Taylor.

interpret the regulations in 43 CFR 3410.3-1(h) to allow new exploration licenses to be issued to it simultaneously with the expiration of Chugach's licenses. Taylor requests that it be issued coal exploration licenses.

[1] On March 21, 1983, a notice of proposed withdrawal was published in the Federal Register, 48 FR 11776, segregating the lands in question from "settlement, sale, location or entry under the general public land laws \* \* \* location and entry under the general mining law \* \* \* and leasing under the Mineral Leasing Act of February 25, 1920, as amended \* \* \* to be reserved for conveyance to Chugach Natives, Inc." 48 FR at 11777. The proposed withdrawal also provided that "[a]pplications for leases under the Mineral Leasing Act, as amended, will be rejected until the lands are appropriately classified to permit mineral leasing." 48 FR at 11779.

Even if we were to conclude that the State Director's action in declining to grant participation was error, which we do not, the segregation precludes the granting of the relief sought by Taylor.

Under the circumstances of this case the action of the State Director was not improper. When his letter issued on February 17, 1983, the three coal exploration applications were close to expiration; 2/ segregation of the land was imminent; and conveyance to Chugach was to follow soon thereafter. These are the types of circumstances contemplated by the Board when it indicated in the earlier decision that conveyance of the land could negate the necessity for further action on Taylor's request. Here, the State Director informed Taylor prior to segregation and conveyance that, in essence, no action would be taken to grant Taylor's request. 3/

Conveyances under the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1601 (Supp. V 1981), are to be made subject to valid existing rights. 43 U.S.C. § 1613 (Supp. V 1981). Taylor's appeal of BLM's June 7, 1983, decisions to issue interim conveyances to Chugach was an attempt to reverse or postpone those conveyances pending resolution of its asserted right to participate in the three coal exploration licenses.

We have held that the State Director did not act improperly in February 1983 in declining to allow Taylor's participation in the coal exploration licenses. Thus, BLM's June 7, 1983, decisions properly did not recognize as

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2/ Contrary to Taylor's assertion that new exploration licenses could be issued to it simultaneously with the expiration of Chugach's licenses, the regulation, 43 CFR 3410.3-1(h), appears to contemplate the issuance of a new license in such a situation to the holder of the previous license. Thus, the regulation states: "The licensee may apply for a new exploration license as described in this section." (Emphasis added.)

3/ The State Director noted in his decision, "While the interests of Taylor and Associates may have inadvertently been affected as discussed by IBLA, we can only apologize and strive to avoid a recurrence in future activities."

valid existing rights Taylor's requests to participate in the coal expiration licenses which had expired or were due to expire.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from in IBLA 83-480 and IBLA 83-799 are affirmed.

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Bruce R. Harris  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Will A. Irwin  
Administrative Judge

